

ILLINOIS POLLUTION CONTROL BOARD  
July 17, 1975

CONTINENTAL CAN COMPANY, INC.,            )  
  Metals Division,                        )  
  Petitioner                                )  
  )  
  )     PCB 75-199  
  )     PCB 75-200  
  )     PCB 75-201  
  )  
v.    )  
  )  
ENVIRONMENTAL PROTECTION AGENCY,        )  
  Respondent.                              )

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) pursuant to the Board's May 15, 1975 more information Orders.

Continental Can Company, Inc. (Can) filed its amended petitions on June 27, 1975. The amended petitions seek to remedy defects in the original petitions. The Board ordered Can to provide information relating to the ambient air quality in the area affected by the proposed variances and whether the grant of the variances would cause or contribute to the area's failure to meet ambient air quality standards.

Can's amended petition included an allegation that Can's emissions would "not materially interfere with the attainment or maintenance of national or state ambient air quality standards." We hold that Can's variance petition states a prima facie cause of action entitling it to a hearing. However, we caution Petitioner that, in said hearing, it will have the burden of proof in substantiating its allegation by a preponderance of the evidence.

Petitioner raised several issues in its amended petitions concerning the credibility of the regulation from which the variances are requested. These issues included: 1) the relevance of hydrocarbon levels in a given AQCR to impairment of public health and welfare in that region, 2) the validity of the data base used for the Chicago MMA AQCR to determine its level of violation and priority for air quality control of hydrocarbons, and 3) the relevance of the limitations of emissions set out in Rule 205(f) to overall air quality. These issues are not subject to being resolved in an adjudicatory proceeding. The proper method, pursuant to the Procedural Rules 202, 203, and 204, would be to propose an amendment to the regulation in question and submit that proposal with a statement of facts in support of it,

together with a petition signed by 200 persons with home addresses specified, to the Board. These are the procedural prerequisites to the Board's ordering a regulatory hearing.

This Opinion constitutes the Board's findings of fact and law in this matter.

ORDER

It is the Order of the Board that the petitions in PCB 75-199, PCB 75-200, and PCB 75-201 be set for hearing.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 17<sup>th</sup> day of July, 1975 by a vote of 5-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board